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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In re Applications of	)	WT Docket No. 97-199
	)	
WESTEL SAMOA, INC.	)	File No. 00560-CW-L-97
	)	
For Broadband C Block Personal Communications Services Facilities	)	
	)	
and	)	
	)	
WESTEL, L.P.	)	File Nos. 00129-CW-L-97
	)	00862-CW-L-97
For Broadband C Block Personal Communications Services Facilities	)	00863-CW-L-97
	)	00864-CW-L-97
	)	00865-CW-L-97
	)	00866-CW-L-97

To: Honorable Arthur L. Steinberg
Administrative Law Judge

OPPOSITION TO MOTION FOR PROTECTIVE ORDER

Anthony T. Easton, by his attorneys and pursuant to section 1.294(a) of the Commission's Rules ("Rules"), hereby opposes the Motion for Protective Order ("Motion") filed in this proceeding by ClearComm L.P. ("ClearComm").

Nobody forced ClearComm to intervene in this proceeding. ClearComm wanted in, and it made extravagant claims to supports its intervention. Claiming that many of the issues raised in the designation order were based on information it brought forward, ClearComm contended that its "investigation and conclusions are central to the very foundations of this proceeding." Petition to Intervene at 6 (Nov. 17, 1997). ClearComm promised that it and its employees would be "valuable sources of information." *Id.* Now that it is a party, ClearComm wants to withhold information and shield itself from reasonable discovery.

ClearComm claims that discovery should be permitted "only on matters directly relevant to the issues designated in this proceeding." Motion at 1. However, when the shoe was on the other foot, and Mr. Easton wanted to limit the scope of his deposition "strictly" to the hearing issues[1/], ClearComm took an appropriately expansive view of discovery:

> Section 1.311 of the Rules, governing discovery, is modeled in material parts on Rule 26, of the Federal Rules of Civil Procedure ["Federal Rules"] which courts have consistently interpreted to permit broad discovery of parties and nonparties. Like Rule 26, Section 1.311 provides that "[p]ersons and parties may be examined regarding any matter, not privileged, which is relevant to the hearing issues. Moreover, under Rule 26 and Section 1.311, so long as the "testimony sought appears reasonably calculated to lead to the discovery of admissible evidence," the assertion that the testimony will not be admissible at the hearing "is not ground for objection." Like the discovery provisions of the Federal Rules..., the Commission's "discovery rules should be accorded broad treatment." As such, "the Commission's discovery rules accord parties broad latitude in questioning witnesses during prehearing discovery."[2/]

One of the purposes of discovery under Rule 26 of the Federal Rules is to obtain information for use in cross-examination and for the impeachment of witnesses. *See Hickman v. Taylor,* 329 U.S. 495, 511 (1947); *Kerr* v. *United States District Court for the Northern District of California,* 511 F.2d 192, 196-97 (9th Cir. 1975), *aff'd,* 426 U.S. 394 (1976); *Nationwide Mutual Life Insurance Co.* v. *Smith,* 174 F.R.D. 250, 253 (D. Conn. 1997); *In re NASDAC Market-Makers Antitrust Litigation,* 929 F.Supp. 723, 725 (S.D.N.Y. 1996); *EEOC* v.

1/ Motion for Protective Order at 1 (Nov. 6, 1997).

2/ Response by ClearComm, L.P., to Anthony T. Easton's Motion for Protective Order at 2-3 (Nov. 17, 1997) (citations omitted).

Buffalo Broadcasting Co., Inc., 163 F.R.D. 178, 180 (W.D.N.Y. 1995); *United States* v. *IBM Corp.*, 66 F.R.D. 215, 218 (S.D.N.Y. 1974). Information bearing upon the credibility of witnesses is relevant, discoverable evidence:

> In measuring the credibility of a witness' testimony, it is... important to search out which such testimony is biased by personal motives and the force of any motives and to explore a witness' interest in the outcome of a case and the extent of that interest. Thus, it would follow that the nature and the extent of a witness' motives and his interest in the outcome of the case bear importantly upon an evaluation of the witness' objectivity, his bias, and the weight to be accorded his testimony.[3/]

Mr. Easton needs to inspect documents relating to the so-called "squeeze out" of the SDE Trust to obtain information bearing in the nature and extent of the biases of the various principals of SuperTel Communications Corporation ("SuperTel"), ClearComm's corporate general partner. The documents are needed not only for the purposes of the hearing, but to prepare for the depositions of the SuperTel principals which are presently scheduled to begin on June 9, 1998.

Mr. Easton plans to take the depositions of Frederico H. Martinez, Javier O. Lamoso, Lawrence Odell and Richard Reiss, who were identified as officers of SuperTel and Unicom Corporation ("Unicom"), SuperTel's predecessor as ClearComm's general partner. *See PCS 2000, L.P.*, 12 FCC Rcd 1703, 1704-6 (1997). All four were identified in the designation order in this case as having knowledge

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[3/] *United States* v. *IBM Corp.*, 66 F.R.D. at 218-19.

of facts relevant to Mr. Easton's alleged misrepresentation and lack of candor. *See Westel Samoa, Inc.*, 12 FCC Rcd 14057, 14064, 14066, 14067-68 (1997). Furthermore, Messrs. Martinez and Lamoso were identified by the Wireless Telecommunications Bureau as having "personal knowledge" of the relevant facts in this case. Wireless Telecommunications Bureau's Responses to the Interrogatories by Anthony Easton at 12 (May 20, 1998).

Mr. Lamoso has given evidence on several key points. The Commission cited to his testimony that Mr. Easton told him specifically on the day of the bidding error that the "mistake was caused by the Commission's computer." *Westel*, 12 FCC Rcd at 14064. It was Mr. Lamoso who told the press that the $180 million bid was "definitely a mistake on the FCC's side." *PCS 2000 Makes $162 Million Bidding Blunder*, PCS Week, Jan. 31, 1996 at 2. Three days after the bidding error, Mr. Lamoso personally verified ClearComm's request for a waiver of the bid withdrawal penalty, which included the statement, "PCS 2000 notes that some press reports have erroneously claimed that PCS 2000 attributes the error to the Commission." Letter of Michael Duel Sullivan to William F. Calon at 2 (Jan. 26, 1996). The Commission suggests that the deletion of that particular claim from ClearComm's revised waiver request was somehow evidence of Mr. Easton's lack of candor. *See Westel*, 12 FCC Rcd at 14070; *PCS 2000*, 12 FCC Rcd at 1713.

Mr. Lamoso was the source of other allegations adverse to Mr. Easton. Mr. Lamoso testified that Mr. Easton was still trying to blame Ms. Hamilton during the Unicom board meeting of January 27,

1996. *See Westel*, 12 FCC Rcd at 14067-68. And it was Mr. Lamoso who claimed that it was his understanding that Mr. Easton deleted the relevant computer files, and that files were "deleted and purged in a manner which has prevented the reconstruction of their contents." *Id.* at 14070.

Based on the foregoing, it appears that Mr. Lamoso may be a key witness in the hearing. Consequently, Mr. Easton is entitled to discover information that can be used to cross-examine or impeach Mr. Lamoso. The matter of the ouster of the SDE Trust is highly relevant for that purpose.

By way of background, Mr. Martinez and Mr. Odell were senior partners in the law firm of Martinez, Odell & Calabria ("Martinez, Odell") which represented Mr. Easton and his wife, Susan, beginning in early 1993. In January 1995, Messrs. Martinez and Odell formed the SDE Trust as an irrevocable trust with Mr. Easton as grantor and Mrs. Easton as beneficiary. In addition, Mr. Martinez recommended that Mr. Lamoso (who had previously been an associate with Martinez, Odell) serve as the trustee of the SDE Trust.[4/] Messrs. Martinez and Odell continued to serve as counsel to the trust through 1996.

Based on Mr. Martinez's advice, PCS 2000 was formed with Unicom as its general partner. The SDE Trust and six other trusts owned 90% of Unicom's stock. As the trustee of the SDE Trust and four other trusts, Mr. Lamoso controlled 59.4% of the Unicom stock.

[4/] Mr. Martinez also introduced the Eastons to Mr. Reiss, who was the investment advisor to Martinez, Odell. Mr. Reiss shared office space with the law firm.

Messrs. Martinez, Odell, Lamoso and Reiss each held 2% of the stock.

Mr. Easton has evidence suggesting that Messrs. Martinez, Odell, Lamoso and Reiss seized upon the opportunity presented by the bidding error to misappropriate the SDE Trust's interest in PCS 2000. On May 2, 1996, Messrs. Martinez and Reiss travelled to California to meet with Mrs. Easton. At the meeting, Mr. Reiss announced that Unicom was prepared to purchase the SDE Trust's shares. He stated that the Commission would not grant PCS 2000's applications so long as the trust owned Unicom stock. When Mrs. Easton inquired whether the Unicom stock could be donated to charity, Mr. Reiss insisted that only Unicom could acquire the stock. Messrs. Martinez and Reiss threatened Mrs. Easton personally with litigation if the SDE Trust did not sell its shares back to the corporation.

Where their offer to purchase the SDE Trust's shares was not accepted, the Unicom shareholders sold all of Unicom's assets, including its interest as the general partner of PCS 2000, to SuperTel. All the Unicom shareholders were issued shares in SuperTel in the same proportion as the Unicom shareholder interest with the sole exception of the SDE Trust. The 38.6% of SuperTel's shares, corresponding to the SDE Trust's interest in Unicom, were conveyed to Mr. Reiss.

After the SuperTel transaction, Mr. Lamoso signed or verified papers filed with the Commission that suggested that Mr. Easton had

an attributable interest in the SDE Trust.[5/] In effect, that claim was made by the former trustee of the SDE Trust for his own benefit, as well as for the benefit of the two lawyers (Martinez and Odell) who formed the trust.

As a result of the SuperTel transaction, Mr. Reiss acquired an interest in ClearComm, which Mr. Easton valued at $5 million, which Mr. Reiss will hold for the benefit of the other SuperTel shareholders. It is obviously in the personal interests of Messrs. Martinez, Odell, Reiss and Lamoso that SuperTel maintains its ownership interest in ClearComm, and that ClearComm prevails in its claim to approximately $7 million held in escrow by Romulus Telecommunications, Inc. Thus, they have a personal financial stake in the outcome of this case, which Mr. Easton is entitled to explore in discovery.

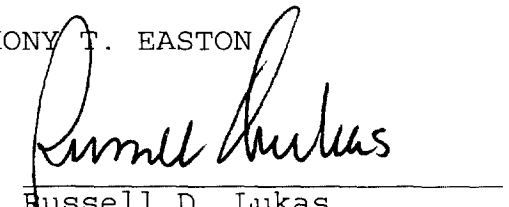
Finally, ClearComm's speculation that Mr. Easton will use discovery to obtain facts for collateral litigation should be rejected. *See* Motion at 2 n.4. Again, when it was opposing Mr. Easton's request for a protective order, ClearComm argued that the concern that a "deposition may be used in a collateral proceeding... is not a ground for refusing an examination." Response at 7 (quoting *De Seversky* v. *Republic Aviation Corp.*, 2 F.R.D. 183, 185 (E.D.N.Y., 1941)).

[5/] *See* Opposition to "Petition to Deny or for Injunctive Relief" at 17 (Aug. 27, 1996); Letter of Javier O. Lamoso to William F. Caton at 3 (July 2, 1996).

For all the foregoing reasons, Mr. Easton respectfully requests that the Motion be denied.

Respectfully submitted,

ANTHONY T. EASTON

By: 

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May 27, 1998

CERTIFICATE OF SERVICE

I, Janet M. Perry, a secretary in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 27th day of May, 1998, sent by first class United States mail, copies of the foregoing OPPOSITION TO MOTION FOR PROTECTIVE ORDER to the following:

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